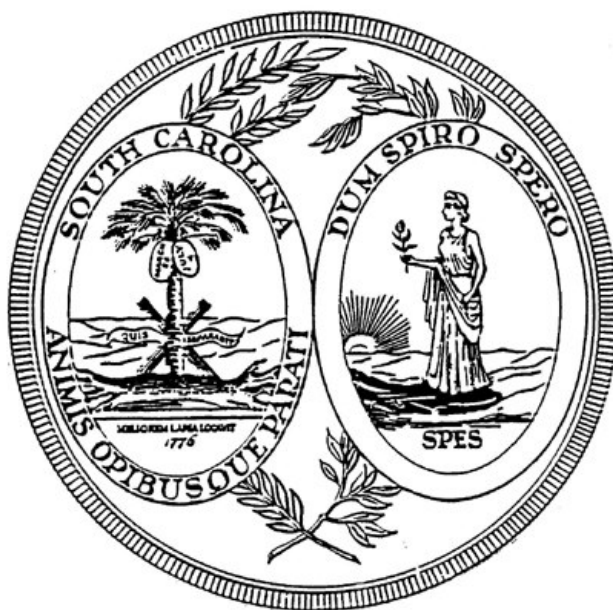


RULES OF PROCEDURE FOR THE OFFICE OF MOTOR VEHICLE HEARINGS



Effective April 30, 2009

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**RULES OF PROCEDURE
FOR THE
OFFICE OF MOTOR VEHICLE HEARINGS**

1. **Authority and Applicability.** The promulgation of these Rules is authorized by S.C. Code Ann. §1-23-660 (as amended). These Rules shall be the exclusive rules governing all proceedings before the Office of Motor Vehicle Hearings.

Note to 2009 Amendments

Act 279 of 2008 changed the name of the Division of Motor Vehicle Hearings to the Office of Motor Vehicle Hearings. All references in these Rules to the “Division of Motor Vehicle Hearings,” “DMVH,” or “Division,” have been amended accordingly.

2. **Definitions.**

- A. **Administrative Law Court** means an independent body of administrative law judges who preside over public hearings involving the promulgation of regulations, as authorized in S.C. Code Ann. § 1-23-111, and decide contested cases and appellate cases pursuant to the authority in S.C. Code Ann. § 1-23-310, et seq. and as otherwise provided by law.
- B. **Administrative Law Judge** means a judge as defined in S.C. Code Ann. §§ 1-23-310(1) and 1-23-500 and as elected pursuant to S.C. Code Ann. § 1-23-510.
- C. **Administrative Procedures Act** means Article 3, Chapter 23 of Title 1, the South Carolina Administrative Procedures Act.
- D. **Appeal** means the review conducted by an administrative law judge of a final decision of a hearing officer of the Office of Motor Vehicle Hearings on the record established in the Office and any additional evidence presented to the administrative law judge pursuant to the Administrative Procedures Act.
- E. **Chief Judge** means the Chief Administrative Law Judge of the Administrative Law Court as defined in S.C. Code Ann. §§ 1-23-510, 1-23-540, 1-23-570 and 1-23-600.
- F. **Contested Case** is defined in S.C. Code Ann. § 1-23-310. It is a case for which an administrative hearing is conducted pursuant to the Administrative Procedures Act, and includes hearings conducted by the Office of Motor Vehicle Hearings pursuant to Section 1-23-660.
- G. **Court** means the Administrative Law Court. It is defined in S.C. Code Ann. §1-23-500 as a court of record.
- H. **Hearing Officer** means a hearing officer of the Office of Motor Vehicle Hearings who is appointed by the Chief Judge of the Administrative Law Court to conduct contested case hearings.
- I. **Office** means the Office of Motor Vehicle Hearings.
- J. **Office of Motor Vehicle Hearings** means the Office of Motor Vehicle Hearings created by S.C. Code Ann. §1-23-660. Its purpose is to provide contested case hearings arising from determinations by the South Carolina Department of Motor Vehicles.
- K. **Party** means each person or agency as defined in S.C. Code Ann. § 1-23-310 named or admitted as a party or properly seeking and entitled to be admitted as a party, including a law enforcement agency as provided by S.C. Code Ann. §1-23-660. An applicant or licensee whose application or license is the subject of a request for a contested case hearing shall be deemed a party and shall be served with copies of all papers filed in the case.

3. **Time.**

- A. **Computation.** In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after the designated period of time begins to run is not included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a State or Federal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor such holiday. When the period prescribed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation. A half holiday shall be considered as any other day and not as a holiday.
- B. **Enlargement.** For good cause shown, the hearing officer to whom a case is assigned may extend or shorten the time to take any action, except as otherwise provided by rule or law.
- C. **Service by Mail.** Unless otherwise provided in these Rules, whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail or upon a person designated by statute to accept service, five days shall be added to the prescribed period.

Note

The method of calculating time in ALC Rule 3(A) is adopted. An additional five days if service is made by mail is available unless otherwise provided in these Rules.

4. **Filing; Request for Contested Case Hearing.**

- A. **Filing with the Office.** A request for a contested case hearing, accompanied by a filing fee as provided by Rule 21, must be filed with the Office. The Office must serve a copy of the request on each party, including the Department of Motor Vehicles. After the request for hearing and filing fee are delivered to the Office, all subsequent filings must contain the docket number assigned. The Office will maintain its official file from the receipt of the request for hearing until a final order is issued by the hearing officer.
- B. **Time for Filing Request.** Unless otherwise provided by statute, a request for a contested case hearing must be filed within thirty days after actual notice of the Department of Motor Vehicles' determination.
- C. **Content of the Request.** The request for a contested case hearing may be submitted on a form prescribed by the Office and shall contain the following information:
 - (1) the name, address, telephone number and e-mail address of the party requesting the hearing;
 - (2) the issue for which the hearing is requested;
 - (3) information sufficient to identify the matter which is the subject of the hearing;
 - (4) a copy of the Department's written determination or letter;
 - (5) the relief requested.

The request for the hearing will not be assigned to a hearing officer until all required information and the filing fee is received. If a representative of a party files the request for hearing, the request must contain the name, address, telephone number and e-mail address of the representative.

- D. Filing Defined.** The date of the filing of the request is the date of delivery or the date of mailing. All documents filed with the Office, other than the request for a contested case hearing as provided in subsection (A), shall be accompanied by proof of service of such document on all parties, and, if filed by mail, shall be accompanied by a certificate of the date of mailing. A document, pleading or motion or other paper is deemed filed with the Office by:
- (1) delivering the document to the Office; or
 - (2) depositing the document in the U.S. mail, properly addressed to the Office, with sufficient first class postage attached.
- E. Paper Size.** All papers filed with the Office shall be on letter-size (8½ by 11 inches) paper. Exhibits or copies of exhibits in their original form which exceed that size shall be reduced by photocopying or otherwise to letter-size so long as such documents remain legible after reduction.

Note

All filed papers must be served upon all parties to the case, including the Department of Motor Vehicles, and must be accompanied by proof of service. The Office shall serve a copy of the request for a contested case hearing upon all parties, but all other documents filed with the Office must be served upon all parties by the proponent of the document and must be accompanied by proof of service.

- 5. Service.** Any document, pleading, motion, brief or memorandum or other paper filed with the Office, other than the request for a contested case hearing as provided in Rule 4(A), shall be served by the proponent of the document upon all parties to the proceeding. Service shall be made upon counsel if the party is represented, or if there is no counsel, upon the party. Service shall be made by delivery, or by mail to the last known address. Service is deemed complete upon mailing. Service that complies with Rule 5(b)(1), SCRCF, also shall satisfy this Rule. A party who furnishes an e-mail address to the Office pursuant to Rule 4(C) or Rule 6 consents to the service of notices of hearing or other notices issued by the Office via e-mail.

Note

Service is required of all documents filed with the Office, except for the initial request for a contested case hearing, which is served by the Office. It is deemed complete upon mailing. The method of service is by delivery or mailing, but not fax. However, if a party furnishes an e-mail address to the Office, that party thereby consents to the services of notices issued by the Office, including notices of hearings, via e-mail.

- 6. Content of Papers.** The Office shall assign a docket number to each case. All papers, to include pleadings, motions and orders, shall be filed with the Office and a copy served on all other parties of record. All papers shall be signed and contain:
- A. a caption setting forth the title of the case and a brief description of the document;
 - B. the case docket number assigned by the Office;
 - C. the name, address, telephone number and e-mail address of the person who prepared the document, to include the name, address, telephone number and e-mail address of the attorney representing the party.
- 7. Forms.** The Chief Administrative Law Judge shall prescribe the content and format of forms required by these rules. The use of required forms as prescribed is mandatory.

8. **Right of Parties to Participate.** Parties in a contested case have the right to participate or to be represented in all hearings or other proceedings related to their case. Any party may be represented by an attorney admitted to practice, either permanently or *pro hac vice*. A party proceeding without legal representation shall remain fully responsible for compliance with these Rules and the rules contained in the Administrative Procedures Act.
9. **Assignment of Case to Hearing Officer; Hearing Officer's Powers and Duties.**
- A. **Assignment of Case and Notice of Hearing.** Upon receipt of the request for contested case hearing and payment of the filing fee, the case shall be assigned to a hearing officer. The Office shall issue a Notice of Hearing at least thirty days before the hearing date, that sets forth the date, time, place, and purpose of the hearing and the name of hearing officer assigned to the case.
 - B. **Manner of Service of Notices.** The Notice of Hearing and any other notices issued by the Office or the hearing officer in the case may be served on all parties via e-mail.
 - C. **Hearing Officer's Powers and Duties.** The hearing officer assigned to the case shall determine the appropriate procedures applicable to the case, rule on all motions, preside at the hearing, rule on the admissibility of evidence, issue orders and rulings to ensure the orderly conduct of the proceedings and issue the final order. In cases involving *pro se* litigants or those without substantial knowledge and experience in administrative matters, the hearing officer shall make reasonable efforts to ensure that the hearing is fair.
 - D. **Assignment of Cases on Remand.** When a case is remanded to the Office from an appellate body, the case shall be assigned to the same hearing officer who conducted the original contested case hearing.

Note

The Office issues the notice of the contested case hearing at least thirty days before the hearing date, except in matters brought pursuant to S.C. Code Ann. § 56-5-2951(F), which requires that the notice of hearing be issued within thirty days after the request for a hearing is received by the Office. The Office or the hearing officer may serve any notices issued in the case by e-mail, if a party has furnished an e-mail address. Once a case is assigned to a hearing officer, that hearing officer is responsible for all decisions in the case, and will conduct any further proceedings in the case in the event of a remand.

Note to 2009 Amendments

Section 56-5-2951 no longer requires issuance of a notice of hearing within thirty days after the request for a hearing is received by the Office. Therefore, subsection (A) is amended to reflect this change in the law.

10. **Motions.**
- A. **Content and Filing.** All motions shall be written, contain the caption of the case and the title of the motion, the docket number and the name, address, telephone number and e-mail address of the person or representative filing the motion. The motion shall state with specificity the grounds for relief and the relief sought. All motions pertaining to the hearing shall be filed not later than ten days before the hearing date. Any party may file a written response to the motion within ten days unless the time is extended or shortened by the hearing officer.
 - B. **Motions for Continuance.** A motion for continuance shall be in writing, state with specificity the reasons therefor, and be signed by the requesting party or representative. Motions filed less than forty-eight (48) hours prior to the

scheduled hearing will be granted only for good cause shown. Motions not served upon all parties will not be granted except in an emergency. Attorneys with court conflicts must include with the motion the case name, the court, the county, the docket number, the presiding judge's name and telephone number, and the date the attorney received notice of the conflicting court appearance. Attorneys must notify the Office as soon as possible when a court conflict occurs.

Note

Motions generally must be made at least ten days before the contested case hearing. An exception to this rule is provided for continuances, which should be requested at least forty-eight hours prior to the hearing. A party requesting a continuance less than forty-eight hours prior to the hearing must show good cause for the continuance to be granted. Motions must be served upon all parties, and a motion for continuance not served upon all parties will only be granted in the event of an emergency where prior notice is not feasible. Attorneys requesting a continuance because of a court conflict must include the required information with the motion, and they are obligated to notify the Division as soon as possible after they receive notice of the conflict.

Note to 2009 Amendments

Rule 10(A) is amended to provide a procedure for the filing of written responses to motions.

- 11. Discovery.** With the exception of subpoenas as set out in Rule 12, discovery shall not be available in cases before the Office.

Note to 2009 Amendments

The amendments to Rule 11 delete all references to discovery under Rules 26-37 of the South Carolina Rules of Civil Procedure. Therefore, for all cases filed on or after April 30, 2009, the only discovery available will be the issuance of subpoenas as provided in Rule 12.

- 12. Subpoenas.**

- A. Issuance and Service.** Subpoenas by or on behalf of any party shall be issued in blank by the Office. The party requesting the subpoena shall complete the form and return the completed form to the Office for signature before service, and shall file a copy of the subpoena and the return of service with the Office upon service. An attorney authorized to practice before the courts of the State of South Carolina, as an officer of the court, may also issue and sign a subpoena on behalf of the Office. The attorney shall complete the form before service and file a copy of the subpoena and the return of service with the Office upon service. The party requesting the subpoena shall be responsible for service of the subpoena, and, when the subpoena compels the appearance of a witness at a hearing, for the payment of fees and mileage in accordance with Rule 45, SCRCF.

A subpoena may be served on any law enforcement officer personally or by serving the officer or his law enforcement agency by certified mail, return receipt requested. For subpoenas compelling the appearance of a witness at a hearing, the witness shall comply with the subpoena by appearing at the hearing at the date, time, and place set forth in the subpoena. For subpoenas compelling the production of documents or other tangible objects, the proponent of the subpoena must serve the subpoena at least ten days prior to the scheduled hearing date, and the person or agency served with the subpoena shall be required to deliver to the proponent of the subpoena or make available at the office of the producer the

subpoenaed items a minimum of five days prior to the scheduled hearing date, unless otherwise ordered by the hearing officer for good cause shown. Failure to comply with this section may result in the exclusion of evidence not produced in compliance with the subpoena. Failure to comply with this section may also result in the exclusion of testimony related to tangible evidence not produced in compliance with the subpoena.

- B. Enforcement of Subpoenas.** Upon request by a party to the Administrative Law Court pursuant to S.C. Code Ann. § 1-23-320(d), the assigned administrative law judge shall enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of records, books, and papers, documents, photographs, tapes, tangible objects or any other subpoenaed item, and shall have the power to punish as for contempt of court, by fine or imprisonment or both, the unexcused failure or refusal to attend and give testimony, to produce any requested items as set forth and required by a subpoena to be produced, or to comply with any order the administrative law judge issues in the matter.
- C. Motions to Quash or Modify Subpoenas.** A person to whom a subpoena has been issued may move before the Administrative Law Court pursuant to S.C. Code Ann. § 1-23-320(d) for an order quashing or modifying the subpoena.

Note

The Office issues subpoena forms in blank. An unrepresented party requesting a subpoena must complete the blank form and return the completed form to the Office for signature before service. Attorneys may also issue and sign subpoenas on behalf of the Office. In either case, a person requesting a subpoena must file a copy of the subpoena and the return of service with the Office after the subpoena has been served. The rule sets forth procedures by which law enforcement officers may be served, and deadlines for compliance with subpoenas. If a party fails to comply with this rule, the hearing officer may exclude the evidence not produced in compliance with the subpoena. However, pursuant to S.C. Code Ann. § 1-23-320(d), only administrative law judges have the power to enforce, quash, or modify a subpoena issued by the Office.

Note to 2009 Amendments

Rule 12(A) has been amended to specify that a person served with a subpoena compelling the production of documents or tangible objects must comply with the subpoena either by delivering the subpoenaed items to the proponent of the subpoena or making the items available at the producer's office. In either event, the subpoenaed items must be made available at least five days prior to the hearing. The rule is further amended to provide that failure to comply with the rule may result in the exclusion of not only the evidence not produced, but also any testimony which is related to that evidence.

- 13. Default.** The hearing officer may dismiss a contested case or dispose of a contested case adverse to the defaulting party. A default occurs when a party fails to plead or otherwise prosecute or defend, fails to appear at a hearing without the proper consent of the hearing officer or fails to comply with any interlocutory order of the hearing officer. Any non-defaulting party may move for an order dismissing the case or terminating it adversely to the defaulting party. Any order issued which disposes of a case pursuant to this rule must contain specific findings supporting the dismissal.
- 14. Evidence.**

 - A. Governing Statute.** S.C. Code Ann. §1-23-330 (1976) (as amended) shall govern questions of evidence.

- B. Objections.** Objections to evidence shall be timely made and noted in the record. Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony. If the evidence excluded consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.
- C. Documentary Evidence Submitted by Department.** For matters in which the Department of Motor Vehicles is not required to appear at the hearing pursuant to S.C. Code Ann. § 1-23-660, any records submitted by the Department as documentary evidence prior to the hearing must be in the form of certified copies.

Note

As required by the Administrative Procedures Act, the rules of evidence apply to contested case hearings before the Division. In certain cases, the Department of Motor Vehicles is not required to appear at the hearing. Therefore, to ensure the reliability of documentary evidence submitted by the Department in such cases, the rule requires this evidence to be in the form of certified copies.

15. Contested Case Hearings.

- A. Order of Proceedings.** The hearing officer shall conduct the hearing in the following manner:
 - (1) The hearing officer shall give a brief opening statement describing the nature of the proceeding.
 - (2) The parties may be given an opportunity to present brief opening statements.
 - (3) Parties shall present their evidence in the order determined by the hearing officer. Normally, the party with the burden of proof will be the first to present evidence, all other parties being allowed to cross-examine in an orderly fashion. When that party rests, other parties will then be allowed to present their evidence, again allowing for orderly cross-examination.
 - (4) Each witness shall be sworn or affirmed by the hearing officer and be subject to examination.
 - (5) All objections to procedure, admission of evidence or any other matter shall be timely made and stated on the record.
 - (6) When all of the parties and witnesses have been heard, the parties may be given the opportunity to present brief final arguments.
- B. Burden of Proof.** In matters involving the assessment of fines, the imposition of sanctions, including the suspension or revocation of a license, or the enforcement of administrative orders, the Department of Motor Vehicles shall have the burden of proof. The burden must be met by a preponderance of the evidence.
- C. Decision.** Pursuant to S.C. Code Ann. § 1-23-350, the hearing officer shall issue the decision in a written order which shall include separate findings of fact and conclusions of law. Issues raised in the proceedings but not addressed in the order are deemed denied.
- D. Motion for Reconsideration.** Any party may move for reconsideration of a final decision of a hearing officer in a contested case, subject to the grounds for relief set forth in Rule 59, SCRCP, as follows:
 - (1) Within ten (10) days after notice of the order concluding the matter before the hearing officer, a party may move for reconsideration of the

decision, provided that an appeal to the Administrative Law Court has not been filed.

- (2) The hearing officer shall act on the motion for reconsideration within thirty (30) days after it is filed, and if no action is taken by the hearing officer within that period, the inaction shall be deemed a denial of the relief sought in the motion.
- (3) Pursuant to S.C. Code §1-23-660(B) (as amended), if the Department of Motor Vehicles does not appear either through a representative at any implied consent hearing, or through the submission of documentary evidence at any habitual offender, financial responsibility, or point suspension hearing, it must first file a motion of reconsideration before appealing a hearing officer's decision. The motion must be filed within ten days after receipt of the hearing officer's decision. The hearing officer must issue a written order within thirty days.
- (4) The filing of a motion for reconsideration shall not, of itself, stay the order of the hearing officer or excuse or delay compliance with the order of the hearing officer.
- (5) The time for appeal for all parties shall be stayed by a timely motion for reconsideration, and shall run from receipt of an order granting or denying such motion, or if no order is filed regarding the motion, thirty (30) days after the expiration of the time to issue an order.

The filing of a motion for reconsideration is not a prerequisite to filing a notice of appeal from a final decision of a hearing officer, except as set out in (3).

E. Stay of Final Order. A hearing officer who issues a final order subject to review by the Administrative Law Court may in the order stay its effect. At any time prior to the filing of an appeal, and upon the motion of any party, with notice to all parties, the hearing officer may stay the final order upon appropriate terms. The filing of a motion for a stay does not alter the time for filing an appeal.

Note

Subsections (A) and (B) describe the procedure at the hearing which follows the standard civil trial format. In certain actions, which include the assessment of fines, the imposition of sanctions, or the enforcement of administrative orders, the Department of Motor Vehicles, as the party seeking the enforcement, has the burden of proof. The decision is to be written with separate statements of fact and law. Issues raised in the proceedings but not addressed in the final decision are deemed denied.

Subsection (D) provides for a motion for reconsideration of the decision of a hearing officer in a contested case. The hearing officer must decide the motion within thirty days or it is deemed denied.

Subsection (E) permits the hearing officer to stay the effect of any final order subject to review by the Administrative Law Court. The authority to stay the order is derived from S.C. Code Ann. § 1-23-380(A)(2), which gives the agency or the reviewing court the power to stay the order. Motions for stay do not alter the time for filing an appeal, which is jurisdictional.

Note to 2009 Amendments

Subsection (B) has been amended to provide that the burden of proof is the preponderance of the evidence. Subsection (D) has been amended to incorporate the provisions of Act 279 of 2008, which amended S.C. Code Ann. § 1-23-660 to provide that the Department of Motor Vehicles

must file a motion for reconsideration in certain cases prior to appealing a hearing officer's decision. Finally, subsection (D) has further been amended to provide that, in the event the hearing officer does not rule on the motion for reconsideration, the time for filing an appeal begins to run from thirty days after the expiration of the thirty-day time limit for the issuance of the order.

- 16. Record After Final Decision.** The record of the contested case shall consist of:
- A. All pleadings, motions, intermediate rulings and depositions filed with the Office;
 - B. All evidence received or considered;
 - C. A statement of matters judicially noticed;
 - D. All proffers of proof of excluded evidence;
 - E. The final order or decision of the hearing officer;
 - F. The transcript of the testimony taken during the proceeding, if prepared.
- 17. Appeal of Final Order.**
- A. **Notice of Appeal and Request for Transcript.** The decision of the hearing officer may be appealed to the Administrative Law Court as provided by law and in accordance with the rules of procedure for the Administrative Law Court. An appellant shall file a copy of the notice of appeal with the Office at the same time the notice of appeal is filed with the clerk of the Administrative Law Court. The appellant shall order the transcript within ten days after the date of the service of the notice of appeal, and, unless otherwise agreed by all parties in writing, the appellant must order the entire transcript.
 - B. **Transmission of Record.** The Office shall prepare an index listing each document contained in the record, transmit the index and the record of the contested case to the Court upon receipt of a notice of appeal and the transcript, and serve one (1) copy upon each party to the appeal, unless the time for filing the record is extended by the administrative law judge assigned to the appeal.

Note to 2009 Amendments

Rule 17 has been amended to provide that appeals to the Administrative Law Court must be filed in accordance with the Court's rules, and to specify that the Office must prepare the record on appeal upon receipt of both the notice of appeal and the transcript of the proceeding.

- 18. Recordings and Transcript of Proceedings.** The hearings concerning a contested case shall be available for transcription as required by S.C. Code Ann. §1-23-660 (as amended). The hearing officers will record the proceedings for this purpose and no other party shall be allowed to record the hearing. The cost of preparing a copy of a transcript shall be borne by the party requesting the transcript.
- 19. Clerical Mistakes.** Clerical mistakes in orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the hearing officer at any time of his own initiative or on the motion of any party and after such notice, if any, as the hearing officer orders. During the pendency of an appeal from the decision of a hearing officer, leave to correct the mistake must be obtained from the administrative law judge hearing the appeal.
- 20. Applicability of Rules of the Office.** Once the Office acquires jurisdiction of a matter, the OMVH Rules shall govern all procedural aspects of the matter, notwithstanding any other agency regulation or procedural rule.

- 21. Filing Fee.** Each request for a contested case hearing before the Office must be accompanied by a filing fee in the amount established by law. A case will not be assigned to a hearing officer until the filing fee has been paid. This fee is not required for contested cases brought by the State of South Carolina or its departments or agencies.

Note

The filing fee for contested case hearings before the Division is currently one hundred fifty dollars, as provided by S.C. Code Ann. § 56-5-2952 (Supp. 2006).

- 22. Admission *Pro Hac Vice*.** An attorney desiring to appear *pro hac vice* in a proceeding before the Office must file an Application for Admission *Pro Hac Vice* as provided in Rule 404, SCACR.